REMARKS

Claims 81-89, 91-103, 106-109, and 111-117 are currently pending, as claims 1-80 were canceled previously. Upon entry of the amendment above, claims 81, 82, 88, 93, 97-101, 106-109, and 111-117 will be pending, since herein Applicants have canceled claims 83-87, 89, 94-96, 102, and 103 without prejudice. They have also amended claims 81, 93, and 101. Applicants have amended claim 81 to conform its language to their previous election of the invention represented in Figure 6(b). Support for these amendments is found in Figure 6(b), as well as in the specification. For example, see paragraphs 64-67. The amendment to claim 93 merely conforms it to the preferred terminology of claim 81, as amended herein. Claim 101 has been amended to remove superfluous language.

These amendments have been made to advance prosecution by focusing the claims on the embodiments represented by Figure 6(b) and to use currently preferred terminology, not for reasons related to patentability. Moreover, the amendments do not add new matter, and they are fully supported by the specification, claims, and drawings as originally filed. Notwithstanding these amendments, Applicants also reserve the right to pursue subject matter no longer or not yet claimed in this or a related application.

Applicants respectfully request reconsideration of the invention as now claimed in view of the following remarks.

1. Premature Finality.

As an initial matter, Applicants traverse the finality of the rejections raised in the Action. In particular, Applicants note that none of claims 81-117, prior to the issues raised in the Action, have previously been rejected for any reason. To the contrary, the prior two Office actions, dated 8 April 2003 and 6 April 2004, dealt strictly with

restriction and election of species issues. Not a single statutory basis of rejection was raised in either of those actions. For this reason, Applicants respectfully submit that the finality of the rejections raised in the Action is premature. Accordingly, Applicants request that such finality be withdrawn, in which event the amendments above must be entered as a matter of right.

In the remarks that follow, Applicants address each of the art rejections raised in the Action as they would likely be applied to the claims that will be pending upon entry of the amendment above. However, because of the status of the rejections advanced in the Action and the risk that their premature finality might somehow not be withdrawn, Applicants have taken the precaution of filing a Notice of Appeal in conjunction with this response in order to preserve their rights.

2. Rejections.

Many of the claims stand rejected under 35 U.S.C. § 102(b) as anticipated by co-owned U.S. patent 5,464,386. Applicants respectfully traverse because the '386 patent does not describe a covered cosmetic reservoir. While '386 patent does indeed teach an open pore foam elastomer connected to a fluid source located elsewhere in an electroporation apparatus, or even external to the electroporation apparatus, it does not teach or suggest a reservoir not connected to a fluid source external to a detachable, electrode-containing head. As such, it does not teach each and every element of the invention as claimed, which, Applicants respectfully submit, mandates that this rejection be withdrawn.

Except for claim 108, those claims not rejected under 35 U.S.C. § 102(b) nonetheless stand rejected under 35 U.S.C. § 103(a) and being unpatentable over the '386

patent, alone or in conjunction with one of U.S. patent nos. 5,445,611 or 5,019,034. In the Action, the '386 patent was applied alone with regard to claims 83, 86, 91-95, 99, and 101. Of these, only claims 93, 99, and 101 will remain pending after entry of the amendment above. Applied to these claims, this rejection posits that the portion of the devices of the '386 that include the electrodes may, in fact, be detachable. Applicants agree. That said, as discussed above, the '386 patent does not teach or suggest an electroporation apparatus wherein the detachable, electrode-containing head includes a reservoir that does not require charging with fluid from an external (to the head) fluid source when attached to the electroporation apparatus. Because the '386 patent does not teach or suggest this, it not only fails to provide the requisite motivation, it also fails to provide each and every element of the invention as now claimed. Accordingly, Applicants respectfully request that this rejection also be withdrawn.

As neither the '611 nor '034 patent provides the disclosure needed to support a 35 U.S.C. § 103(a) rejection premised on a combination with the primary '386 patent, and without addressing whether such combinations are or are not appropriate, the rejections of claims 106, 107, 109, and 111-113 should also be withdrawn.

Claims 81 and 108 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent no. 6,283,951 in view of co-owned U.S. patent no. 5,304,120. Applicants respectfully traverse this rejection, and point out that nothing more need be said than to point out that the cited references (each of which relates to catheter-based devices for percutaneous applications), to the extent they may be properly combined (if at all), do not teach or suggest devices for topical delivery or detachable, electrode-containing heads for such devices. As such, they cannot render obvious the claimed invention. For this reason, this rejection should also be withdrawn.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance. As such, they earnestly solicit issuance of a notice to such effect. That said, if any issue remains that can be dealt with appropriately without need for a formal action and response thereto, the Examiner is encouraged to telephone the undersigned at his earliest convenience at 858.350.9690 so that the same may be expeditiously resolved.

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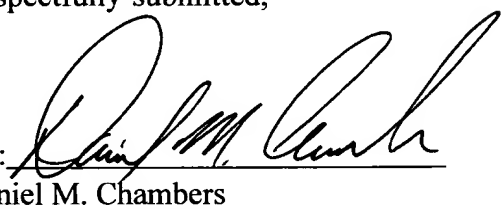
Respectfully submitted,



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